IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting
(Chapter VIII, Rule 32 (2) (b)
Description of Case

Criminal Misc. Application No. 271/2005

Date of decision : 07.06.2005

For the approval of:-

Hon'ble Mr. Justice J.C.S. Rawat

Whether the order/judgment should be sent to the reporters for reporting?

Whether the reporters be allowed to see the judgment?

Dated 07.06.2005
LSR

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

CRIMINAL MISC. APPLICATION NO. 271 OF 2005.

1. Software Technology Group Industries Ltd (S.T.G.) 573, Udyog, Vihar, Phase 5, Gurgaon, Haryana.
2. Dr. S.M. Pathak, S/o Pt. V.N. Pathak, R/o 403, Gayatri Enclave, 90 D.P. Road, Gokul Nagari 1, Office Western Express Highway Kandiwali (E) Mumbai.
3. Yogesh Vaidya son of Late Sri S.L. Vaidya, R/o D 84, Ist Floor Malcha Marg, Chanakyapuri New Delhi.
4. Dr. M.C. Vaidya son of dSLate Sri S.L. Vaidya, R/o E6 DLF Dutub Enclave 1 Gurgaon Dharyana.
5. Dr. Rajan Saxena S/o Late Sri Kanta Prasad Saxena R/o 27-A/31 Takhshila Mahavir Kavage Road, Andheri (E), Mumbai.
6. Dr. S.K. Srivastava Petitioner Late Sri B.L. Srivastava R/o A-1/138 Safdarjang Enclave, New Delhi.
7. B.N. Chauhan S/o Late Sri Karam Singh Chauhan R/o 573 Udyog Vihar Phase-5 Gurgaon Haryana
8. Balvinder Chopra S/o Late Sri D.S. Chopra R/o 573 Udyog Vihar Phase-5 Gurgaon Haryana.
9. Alka Kaul W/o Mr. Kapil Kaul R/o 573 Udyog Vihar Phas-5 Gurgaon Haryana

.....Applicants

Versus

1. State of Uttaranchal
2. Station House Office P.S. Sahaspur Dehradun
3. J.B. Institute of Advance Studies Selakui Dehradun through Director, Sunil Verma R/o 46 Main Road, Mohit Nagar, PS Vasant Vihar Dehradun.

.....Respondents

Mr. S.N. Babulkar learned senior counsel for the applicants.
Mr. K.S. Rautela learned A.G.A.

Hon'ble J.C.S. Rawat, J.

Through this application under section 482 of the Code of Criminal Procedure the petitioners have sought the relief to set aside the order dated 17.01.2005 passed by Special Judicial Magistrate (C.B.I.) Dehradun under section 156 (3) of the Cr. P.C. to register

and investigate in Case Crime No.8 of 2005 (J.B. Institute Vs. Software Technology Group & others) under section 420 IPC, to set aside the F.I.R. and proceedings pending before the investigating officer initiated in pursuance of complaint being Complaint No.08 of 2005 (J.B. Institute Vs. Software Technology Group & others) under section 420 IPC and to set aside the FIR dated 23.01.2005 under section 420 IPC lodged in police station Vasant Vihar Dehradun presently investigated by P.S. Sahaspur district Dehradun in Case Crime No. 08/2005.

Brief facts leading to the petition are that Sri Sunil Verma moved an application under section 156 Cr. P.C. before the Court of Special Judicial Magistrate, Dehradun under section 420 IPC., on which the learned Magistrate passed the Order with the direction to the concerned S.H.O. Vasant Vihar, Dehradun to register the case and investigate the matter according to law on 17.01.2005 and consequently an FIR has been lodged in pursuance of the said order. Feeling aggrieved by the said FIR the present petition has been preferred under section 482 Cr.P.C.

A question arose as to whether the investigation or an FIR could be quashed in exercise of the powers under section 482 Cr.P.C. or if the proper proceeding, therefore, would be one under Article 226 of the Constitution of India.

The learned counsel for the applicants contended that the FIR and the investigation could be quashed even in exercise of the powers under section 482 Cr.P.C. in terms of the decision of the Apex Court. The learned counsel for the State Mr. A.G.A. contended that the court has no power under section 482 Cr.P.C to quash the FIR and the proceeding initiated under section 482 Cr.P.C. The petitioners should take the recourse of Article 226 of the Constitution. It is further pertinent to mention here that the petitions under section 482 Cr.P.C. are cognizable by a Single

Judge in Uttaranchal High Court whereas the criminal writ petitions for quashing the FIR are concerned are filed before a Division Bench in this High Court.

At the first instance I have to examine as to whether the High Court can exercise in its inherent powers under section 482 Cr.P.C. which is similar to Section 561 (1-A) of the Old Cr.P.C, 1908. This point was considered by the Privy Council in ***Emperor V. Khwaja Nazir Ahmad, AIR 1945 PC 18.*** It will be useful to render the relevant part made by the Judicial Committee of the Privy Council which has been considered in a number of decisions/ Privy Council and the Apex Court of this country. The observations are as follows:

:Just as it is essential that every one accused of a crime should have free access to a court of justice so that he may be duly acquitted if found not guilty of the offence with which he is charged, so it is of the utmost importance that the judiciary should not interfere with the police in matters which are within their province and into which the law imposes upon them the duty of enquiry. In India as has been shown there is a statutory right on the part of the police to investigate the circumstances of an alleged cognizable crime without requiring any authority from the judicial authorities, and it would, as their Lordships think, be an unfortunate result if it should be held possible to interfere with those statutory rights by an exercise of the inherent jurisdiction of the court. The functions of the judiciary and the police are complementary not overlapping and the combination of individual liberty with a due observance of law and order is only to be obtained by leaving each to exercise its own function, always, of course, subject to the right of the Court to intervene in an appropriate case

when moved under section 401, Criminal P.C., to give directions in the nature of habeas corpus. In such a case the present, however, the court's functions begin when a charge is preferred before it and not until then. It has sometimes been thought that section 561 A has given increased powers to the court which it did not possess before that Section was enacted. But this is not so. The section gives no new powers, it only provides that those which the court already inherently possess shall be preserved and is inserted, as their Lordships think, lest it should be considered that the only powers possessed by the court are those expressly conferred by the Criminal Procedure Code, and that no inherent power had survived the passing of that Act. No doubt, if no cognizable offence is disclosed, and still more if no offence of any kind is disclosed the police would have no authority to undertake as investigation."

In State of West Bungal Vs. S.N. Basak, AIR 1963 (SC) page 447 *approved the view taken by the Privy Council in Nazir Ahmad's case (supra) and held that at the time the respondent filed the petition in the High Court only a written report was made to the police by the Sub inspector of the police Enforcement branch and on the basis of that report a FIR was recorded by the Officer incharge of police station and started the investigation. There was no case pending at the time excepting that the respondent had appeared before the court and surrendered and had been admitted to bail. The powers of investigation into cognizable offences are contained in Chapter XIV of the Cr. P.C. Section 154 Cr.P.C. deals with regard to the investigation into such offences. Under these Sections the police has the statutory power to investigate and it can not be interfered with by the exercise of powers under section 439 (Old Cr. P.C) or under the inherent powers of the*

Court under section 561A (482 under New Code) of the Code of Criminal Procedure. A question was again considered in ***Abhinandan Jha V Dinesh Misra AIR 1968 SC page 117*** *and after examining the scheme of the Cr. P.C. and the decision of the Privy Council in Nazir Ahmad's case (supra) the Apex court held as under:*

"We have already pointed out that the investigation, under the Code, takes in several aspects, and stages, ending ultimately with the formation of an opinion by the police as to whether, on the material covered and collected a case is made out to place the accused before the Magistrate for trial, and the submission of either a charge-sheet, or a final report is dependent on the nature of the opinion, so formed. The formation of the said opinion, by the police, as pointed our earlier, is the final step in the investigation, and that final step is to be taken only by the police and by no other authority."

The matter was again considered in ***S.N.Sharma V. Bipin Kumar, AIR 1970 SC Page 786*** in which the decision of the Privy Council in the case of Nazir Ahmad's case (supra) was again approved.

In ***1980 Supreme Court Cases (Vol. I) State of Bihar Vs. J.A.C. Saldanha*** *the principle was reiterated and was succinctly stated as follows:*

"There is a clear-cut and well demarcated sphere of activity in the field of crime detection and crime punishment. Investigation of an offence is the field exclusively reserved for the executive through the police department the superintendence over which vests in the State Government. The executive which is charged with a duty to keep vigilance over law and order situation is obliged to prevent crime and if an offence is alleged to have been committed it is its duty to collect evidence for the purpose of proving the

offence. Once *that is completed and the investigating officer submits report to the Court requesting the Court to take cognizance of the offence under Section 190 of the Code its duty comes to an end. On a cognizance of the offence being taken by the Court the police function of investigation comes to an end subject to the provision contained in Section 173(8), there commences the adjudication function of the judiciary to determine whether an offence has been committed and if so, whether by the person or persons charged with the crime by the police in its report to the Court, and to award adequate punishment according to law for the offence proved to the satisfaction of the Court. There is thus a well defined and well demarcated function in the field of crime detection and its subsequent adjudication between the police and the Magistrate. This had been recognized way back in* ***King Emperor*** *v.* ***Khwaja Nazir Ahmad.***

Thereafter, the following questions were referred to the full Bench of the Allahabad High Court in the case of ***Prashant Gaur V. State of U.P., 1988 AW2 828****, and the answers given by the full Bench while deciding the above case are indicated below:*

Question No. 1: Whether under section 482 Cr.P.C. the High has inherent powers to interfere with the investigation by the Police ?	Answer : Investigation into an offence is a statutory function of the police and the superintendence thereof is vested in the State Government. It is only in the rarest of rare cases, and that too, when it is found by the

	Court that the FIR and the investigation over a reasonable length of time, do not disclose the commission of cognizable offence, or any offence of and kind, that the High Court may, under section 482 of the Code interfere with the investigation .
Question No.2: Whether the High Court has powers to Stay arrest during Investigation?	Answer : Under section 482 of the Code, the High Court, may not direct the stay of arrest during investigation except for a limited period in case of such exceptional nature as is referred in the preceding Paragraphs.

Thereafter, the matter was again referred to a larger Bench of the seven Judges of the Allahabad High Court. A full Bench of Allahabad High Court comprising seven Judges were constituted to decide the correctness of the Full Bench decision rendered in Prashant Gaur Vs. State of U.P. (supra). The following questions were referred to the full Bench:

1. Are the answers to the questions Nos. 1 and 2 given by the full Bench and the reasons for recording those answers, in

accordance with the law laid down by the Hon'ble Supreme Court and the Privy Council?

2. If the answer to the above question is not in the affirmative, then what is the correct answer to the questions posed before the Full Bench?

3. If no answer is thought necessary for any reason to the question No. 2, above, then correct legal position with reference to Puttan Singh's case may be laid down.

4. We are required to answer these questions.

The Full Bench while deciding the same in the case of **R.L. Yadav V. State; 1989 A.Cr.R. page 118 at 125** has observed as under:

"20. In our opinion the High Court has no inherent power under section 482 Cr.P.C. to interfere with the arrest of a person by a police officer even in violation of section 41(1)(a) CrPC either when no offence is disclosed in the first information report or when the investigation is malafide as the inherent powers of the court to prevent the abuse of the process of the court or to otherwise secure the ends of justice come into play only after the charge sheet has been filed in court and no during investigation which may even by illegal and unauthorized. <u>If the High Court is convinced that the power of arrest by a police officer will be exercised wrongly or malafide in violation of section 41 (1) (a) Cr. P.C. the High Court can always issue a writ of mandamus under Article 226 of the Constitution restraining the police officer from misusing his legal power</u>.

22. In the case of Puttan Singh V. State of U.P., 1987 AWC 404 it was held:-

"The first information report lodged by Sheo Nath Singh discloses the commission of a cognizable offence and also the complicity of the applicant in it. The police thus has statutory power under section 156 CrPC to investigate the case registered on the basis of the aforesaid first information report without any interference by this Court in the exercise of its inherent powers.....

This court, therefore, has no jurisdiction to direct a police officer not to arrest the applicant during the pendency of the investigation of the case registered on the basis of the First Information Report lodged by Sheo Nath Singh against the applicant and others which disclosed the commission of a cognizable offence in the exercise of its inherent powers under section 482 CrPC."

23. In our opinion the case of **Puttan Singh V. State of U.P. 1987 AWC 404** was correctly decided.

(i) For the reasons given above out answer to the first question referred to us is in the negative.

(ii) Our answer to the second question referred to us is that the High Court has no inherent power under Section 482 CrPC to interfere with the investigation by the police. The High Court has also no inherent power under Section 482 CrPC to stay the arrest of an accused during investigation. The decision by the Full Bench in the case of Prashant Gaur V. State of U.P. (Supra) does not lay down correct law and is overruled.

(iii) Our answer to the third question referred to us is that the decision in the case of Puttan Singh V. State of U.P. (supra) is correct.

The full Bench of the Allahabad High Court was considered by the Apex Court in **Janta Dal Vs. H.S. Chawdhary, A.I.R. 1993 S.C.892 (para 155)** and has further approved the said decision.

The learned counsel for the applicant further relied on the decision of the Apex Court to indicate that even an obiter dicaun of the Supreme Court could be binding upon the decision of the Courts below. The learned counsel relied upon the decision of State of Haryana Vs. Bhajan Lal and others, AIR. 1992 (SC) page 604. In the instant case the matter had gone upto before the Hon'ble Supreme Court against an order recorded by Punjab and Haryana High Court in exercise of the jurisdiction under Article 226 of the Constitution of India and quashed the entire proceeding including of the registration of the F.I.R. The Supreme Court in this decision gave out the guide lines which were to be considered before quashing the FIR/complaint. The following guide lines have been laid down by the Apex Court approving the decision of the Privy Counsel. The Apex Court had considered the case of Nazir Ahamad (Supra) and dealing these paragraphs of the judgment which are quoted below:

"In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercise of the extraordinary power under ***Article 226 or the inherent powers under Section 482 of the Code*** *which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court of or otherwise to*

secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulate and to give an exhaustive list of myiad kinds of cases wherein such power should be exercised.

1. Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirely do not prima facie constitute any offence or make out a case against the accused.

2. Where the allegations in the First Information Report and other materials, if any , accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

3. Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

5. Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6. Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code of the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7. Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding in maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a views to spite him due to private and personal grudge."

The Supreme Court had placed the extra ordinary powers under Article 226 of the Constitution of India and under section 482 of the Cr.P.C. at par without, however, indicating which of the two Forums would be agitated for the proper reliefs. The Apex Court had made the reference to the decision of the Privy Council rendered in Nazir's case (supra) and approved observation made in the said judgment:

In Bhajan Lal's case the decision of the Supreme Court in Kurushetra University Vs. State of Haryana reported in AIR 1977 SC page 2229 had disapproved the quashing of FIR at the premature stage under section 482 Cr. P.C. The following observations were made by the court which are quoted below:

"It surprises us in the extreme that the High Court thought that in the exercise of its inherent powers under section 482 of the Code of Criminal Procedure, it could quash a First Information Report. The Police had not even commenced investigation into the complaint filed by the Warden of the University and no proceeding at all was pending in any court in pursuance of the F.I.R. It ought to be realized that inherent powers do not confer an arbitrary jurisdiction on the High court to act according to whim or caprice. That statutory power has to be exercised sparingly, with circumspection and in the rarest of rare case."

The Apex Court had not disapproved and had not overruled the same. The Apex Court had laid down the guide lines as indicated above in Bhajan Lal's case wherein Section 482 Cr. P.C. as has been stated in the same breath with Article 226 of the Constitution. The learned counsel has further relied upon the decision reported in **S.S.C. 1996 Vol. II page 37 State of Himanchal Pradesh Vs Prathivi Chand and others.** The question arose in this case as to whether the learned Sessions Judge as justified at the stage of taking cognizance of the offence in discharging the accused, even before the trial was conducted on merits, on the ground that the provisions of section 50 of the Narcotic Act had not been complied with. The Apex Court considered the question as to whether the High Court would be justified in exercising its inherent powers under section 482 Cr. P.C. or under Article 226 of the Constitution of India to quash the FIR/charge sheet/complaint. The Supreme Court observed that the next question is whether at this belated stage it would be necessary to remit the matter for trial. In view of the facts that more that ten years have passed and the contraband seized is not of a considerable magnitude. The Court further held that it is not a fit case to remit at this stage for trial but non remittance on facts of this case should not be used as precedent in future cases. It is pertinent to mention here that the investigation agency after completing the investigation had submitted the chargesheet and the learned Judge while taking the cognizance discharged the accused. The High Court set-aside the order of the learned Sessions Judge while exercising the power under section 482 Cr.P.C. and the investigation of the matter was over and the court had no occasion to interfere the investigation. In such situation, it was further observed that when the remedy under section 482 is available, the High Court would be loath and circumspect to exercise its extraordinary power under Article 226 since other efficacious remedy under section 482 of the Code was available. When the court exercises its inherent power under section 482, the prime consideration should only be whether the exercise of the power would advance the cause of justice or it would be an abuse of the process of the court. When Investigating Officer spends considerable time to collect the evidence and places the charge sheet before the court, further action should not

be short-circuited by resorting to exercise inherent power to quash the charge sheet. The Apex Court further observed that the social stability and order requires to be regulated by proceeding against the offender as it is an offence against the society as a whole.

All the decision which have been cited in Bhajan Lal's case (supra) has also been approved in M/s Pepsi Food Ltd. Vs. Special Judicial Magistrate J.T. 1997 (8) S.C. p/705 and Union of India Vs Prakash P. Hinduja, 2003 S.C.C. page 1314. The Hon'ble Supreme Court in series of the judgments referred above relating to the exercise of the inherent power under section 482 Cr. P.C. or extraordinary powers under Article 226 of the Constitution have laid down the guidelines and categories of cases by way of illustration wherein such powers can be exercised. The Apex Court while laying down the guidelines had placed the inherent power under section 482 Cr.P.C. and Article 226 of the Constitution at par without mentioning the forums would be agitated for the proper relief.

The question again arose before the Allahabad High Court in **Mrinal Kant Malik Vs. State of U.P. 1999(1) Allahabad Criminal Reports 106.** The observations are quoted below:

> "*This question came before a Division Bench of the Allahabad High Court in A.S. Bindra Vs. Senior Superintendent of Police and others Criminal Misc. Writ petition No. 1342 of 1997. The Division Bench had before it the decisions of the Supreme Court recorded after the decision of a Seven Judges Full Bench in the case of Ram Lal Yadav by the Allahabad High Court. The Division Bench found that "in the cases of the Supreme Court which have been delivered after the judgment of the Full Bench in Ram Lal's case (supra). none of the Supreme Court cases considered the question whether jurisdiction of the High Court could be invoked under section 482 Cr. P.C. while a criminal case was still being investigated. The Supreme court was, therefore, not deciding this point in any of the subsequent judgments and any casual observation that either in the jurisdiction under Article 226 of the Constitution of India or under section 482 Cr.P.C. in a*

suitable case the High Court could grant relief was just an observation of the Supreme Court to indicate that the High Court could exercise its inherent power under section 482 Cr.P.C. or extra ordinary jurisdiction under Article 226 of the Constitution to interfere in a suitable matter pending investigation." The Division Bench further went to distinguish that the observation of the Supreme Court could only mean that the powers under section 482 Cr.P.C. could be exercised in some proceedings arising out of a complaint while the matter was pending in some court the jurisdiction under Article 226 of the Constitution could be exercised when the matter was still in investigation stage and had not reached the court, The Division Bench further found " The Supreme court, as a matter of fact, has quoted Ram Lal's judgment of the Full Bench of the Allahabad High Court in the case of Janta Dal Vs. H.S. Chauhan, AIR 1993 SC 892(Paragraph) 155 page 926). This paragraph in the aforesaid case has been quoted only to indicate that the similar view which the Supreme Court was taking had already been taken by the High Court in the said Full Bench. As such, case of Ram Lal has been given a seal of approval by the aforesaid judgment of the Supreme Court.

In view of what has been stated above, it is felt that when the judgment in Ram Lal's case has been approved by the Supreme Court and when the Supreme Court had not overruled or differed from the decision in the case of Emperor vs. Khwaja Nizir Ahamad or Kurukshetra University's case (supra), a distinction could always be made between cases pending before a court and pending investigation and while a case pending before a court could be quashed in exercise of powers under section 482

Cr.P.C. the same may not be used to quash a matter pending investigation.".

The learned counsel for the petitioner also relied upon the decision of Andhra Pradesh High Court in Girish Sarwate Vs. State of A.P. 2005 Criminal Law Journal p/729 in which the Full Bench has held that in view of the judgment rendered by the Supreme Court the High Court has the power under section 482 Cr.P.C. to quash an FIR or even a complaint subject to limitations and conditions laid down in the various judgments of the Apex court.

The State of Uttaranchal has been created on 9th of November, 2000 and the High Court was also established on the same date. Prior to the creation of the High Court, the Allahabad High Court has the jurisdiction over the territory of Uttaranchal State. The decisions rendered by the Allahabad High Court prior to the establishment of the High Court of Uttaranchal had binding effect. Thus, the legal position is absolutely clear and also settled by the judicial pronouncement, the Court would not interfere with investigation or during the course would not interfere with investigation or during the course of investigation, which would mean from the time of lodging of the FIR till the submission of the chargesheet or Final Report by the police under section 482 Cr. P.C. This can only be challenged in extraordinary jurisdiction under Article 226 of the Constitution.

In the instant case, the respondent No.3 filed a report before the Magistrate for seeking the indulgence of the Magistrate to send the matter to the police for registration and investigation. The Magistrate directed the police to register and investigate the matter. In pursuance of the order, the FIR was lodged and the investigation of the case was started. The applicant filed certain papers in his defence alongwith the application under section 482 Cr.P.C. This Court while exercising the power under section 482 Cr.P.C. cannot give its findings on the disputed facts on the basis of the documents filed by the applicant alongwith the petition and come to the conclusion particularly when the matter is pending under

investigation. The applicant had the ramedy to file the petition under investigation. The applicant had the remedy to file the petition under Article 226 of the Constitution. It is also pertinent to mention here that this Court cannot grant the relief under Article 226 of the Constitution because in this High Court the petition under section 482 Cr.P.C. is congnizable by the Judge sitting singly and the writ petitions under Article 226 of the Constitution are cognizable by the Division Bench. During the arguments, the Court also gave an option to the applicant to withdraw the present petition and seek the remedy before the Division Bench, which he did not avail.

In view of the above discussion the petition under section 482 Cr.P.C. to quash the FIR is not maintainable. It is accordingly directed that petitioner may choose a writ petition for proper relief before the appropriate Bench.

Without entering into the merit of the case the petition is disposed of accordingly.

(J.C.S. Rawat, J.)

Dated: 07.06.2005
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